IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE THIRTIETH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE DR JUSTICE G.YETHIRAJULU

WRIT PETITION NO: 8588 of 1995

Between:

1 M.Chandrasekhar, S/o Sankaraiah,
Special Court under Land Grabbing (Prohibition) Act,

II floor BRKRB., Govt., Offices Complex, Tank Bund Road, Hyd.
2 K.V.Nagaraju, S/o Sri Satyanaraya,
Special Court under Land Grabbing (Prohibition) Act,

II floor BRKBK., Govt., Offices Complex, Tank Bund Road, Hyd.

..... PETITIONERS

AND

1 The Chairman, Special Court under A.P. Land Grabbing (Prohibition) Act, II floor BRKBK.,

Govt., Offices Complex, Tank Bund Road, Hyd.
2 The Registrar, Special Court under A.P.Land Grabbing (Prohibition) Act, II floor, BRKBK., Govt., Offices Complex, Tank Bund Road, Hyd.
3 The Pay & Accounts Officer, Opp.Surya Theatre, Tilak Road,

Abids, Hyd.
4 The Dy. Pay & Accounts Officer, 3rd floor, BRKBK., Govt. Offices

Complex, Tank Bund Road, Hyd.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ, order or direction, one preferably in the nature of writ of mandamus

directing the 3rd and 4th respondents herein to admit the pay bills of the petitioners submitted by the 1st and 2nd respondents and consequentially direct the respondents herein to pay the salaries forthwith to the petitioners herein.

Counsel for the Petitioner: MR.A.V.SESHA SAI

Counsel for the Respondents: GP FOR FINANCE & PLANNING

The Court made the following:

HONOURABLE DR. JUSTICE G.YETHIRAJULU

WRIT PETITION NO.8588 OF 1995

ORDER:

The petitioners are working as Attenders in the Special Court under the A.P. Land Grabbing (Prohibition) Act. The petitioners contended that as per G.O.Rt.No.4045 General Administration (Sc.F) Department dated 15-12-1988, the Chairman of the Special Court was permitted to appoint suitable qualified candidates against certain sanctioned posts in relaxation to the relevant provisions contained in the Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959. In exercise of the powers conferred under Section 10-A (1) of the Act, the Chairman in his proceedings dated 06-2-1995 appointed the petitioners as Attenders in the time scale of Rs.1375-2375 and other allowances. Those posts fell vacant due to appointment of the incumbents as Process Server and Typist. The petitioners have been continuously working for more than two months, but their salary bills were not honoured by the Deputy Pay and Accounts Officer by raising certain objections who is the 4th respondent herein.

2. The petitioners arecontending that the main objection raised by the 4th respondent was that in view of Section 5 of Act 2 of 1994, the appointments are not valid and it is not in accordance with Section 4 of the said Act. Though the office of the Land Grabbing Court resubmitted the bills by answering all the objections raised by the 4th respondent, the bills were not passed. Therefore, the petitioners approached this Court through the present writ petition seeking a direction to respondents 3 and 4 to admit the pay bills of the petitioners and direct them to pay the salaries.

3. In a similar case a Division Bench of this Court dealt with the matter in

W.P.No.3267 of 2002 and passed an order on 11-07-2002 wherein this Court observed as follows:

> "In our opinion the Finance Department cannot force or take away by an executive order, the statutory power of the Chairman to resort to direct recruitment. The action of the Secretary concerned of the Finance Department is wholly illegal and unwarranted. These orders and actions of the Secretaries of the Finance Department are wholly inconsistent with the independence and dignity of the Special Court and its Chairman. It appears that the Finance Department is treating the Special Court as another department of the State which is not in keeping with the dignity of the judicial institution. The Finance Department of the Government appears to have observed that action should be taken against the concerned viz., the Chairman of the Special Court for appointing the attender. This is derogatory to the independence and dignity of the Special Court and its Chairman. We have already noticed Section 10-A of the Act read with sub-rule (4) of Rule 4 of the Rules which empower the Chairman to appoint officers and employees of the Special Court. Further, Section 15 of the Act provides overriding effect to the provisions of the Act. It reads as follows:
>
> The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or custom, usage or agreement or decree or order of a Court or any other tribunal or authority.
>
> Thus the power to make appointment is statutory vested in the Chairman. By executive order the Finance Department is trying to abridge or curtail such statutory power. In our opinion, the executive cannot abridge or curtail the statutory power. As the provisions of the Act are given overriding powers over other laws even if there is any law which is inconsistent with Section 10-A of the Act Section 10-A of the would prevail.
>
> The Special Court is a judicial institution. It should be an independent one and the staff of the said Court should be isolated from the staff of the State. This is the very reason why exemption was granted to the judicial institutions viz., High Court of Andhra Pradesh, its subordinate Courts, A.P. Administrative Tribunal and the Special Court. To our knowledge there is no provision providing for transfer of staff from the executive to the judicial institutions or from the judicial institutions to the executive. The rationale for not providing such transfers between the executive and the judicial institutions is that the judicial institutions are treated as independent of the executive and therefore, the independence of the judicial institutions is a basic structure of the Constitution.

> We hold that there is no question of seeking from the Finance Department any clearance or approval of the appointments made by the Chairman of the Special Court. We declare that the appointment of an attender by name Y.Satish made by the Chairman of the Special Court on 19-11-2001 is valid and direct the 4th respondent to forthwith pass the pay bill in respect of the said attender as and when; it is submitted by the Special Court from the date of his joining and also to continue to pass the pay bill regularly every month."

4. There is also a judgment of a Single Bench of this Court in **Shaik Hussain Saheb v. Women and Child Welfare Officer, Service Home, Nellore and others,** wherein this Court held that the provisions of the Andhra Pradesh (Regulation of Appointments to Public Services and Rationalization of Staff Pattern and Pay Structure) Act, does not apply to the appointments made to the sanctioned posts.

5. In the light of the judgments of this Court, the objection raised by the 4th respondent is not sustainable. Since the Chairman is competent to make appointments of the petitioners by exercising the power under Section 10-A (1) of the Act, they are entitled for the salaries as per the pay fixation done to their respective posts.

6. The respondents 3 and 4 are therefore, directed to admit the pay bills of the petitioners of the year 1995. The interim direction of this Court dated 26-04-1995 to pass the bills shall be treated as final order of this Court.

7. The Writ Petition is accordingly allowed. No order as to costs.

Dr. G.YETHIRAJULU, J

30th August, 2004

SKM

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this

Monday the thirtieth day of August Two thousand and Four.

REGISTRAR

TO

1 The Chairman, Special Court under A.P.Land Grabbing (Prohibition) Act, II floor BRKRB., Govt., Offices Complex, Tank Bund Road, Hyd.
2 The Registrar, Special Court under A.P. Land Grabbing (Prohibition) Act, II floor, BRKRB., Govt., Offices Complex, Tank Bund Road, Hyd.
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Abids, Hyd.
4 The Dy. Pay & Accounts Officer, 3rd floor, BRKRB., Govt. Offices

Complex, Tank Bund Road, Hyd.

5 Two C.Cs. to G.P. for Finance and Planning, High Court

Buildings, High Court of A.P., Hyderabad (OUT)

6 Two C.D. Copies.